PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ATTORNEYS.

Implied Authority

The Kansas City Court of Appeals decides in *Kelly* v. *Chicago and A. Ry. Co.*, 87 S. W. 583, that where a client authorized his attorney to settle his claim, which authority was known to the other party, the attorney's act in compromising the claim was binding on the client, though in so doing he violated restrictions as to the amount, of which restrictions the other party had no notice. Compare *Steel Works* v. *Manufacturing Co.*, 109 Mass. 464.

Liability for Costs

The Supreme Court of Vermont decides in *Russell's Ex'x* v. *Ferguson*, 60 Atl. 802, that an attorney is not, by virtue of that relation alone, liable for court fees accruing in suits brought by him, but may become responsible for such fees by custom. See *Wires* v. *Briggs*, 5 Vt. 101.

BILLS AND NOTES.

Consideration

Against the dissent of three judges the Court of Appeals of New York decides in *Cramer* v. *Cramer*, 74 N. E. 474, that a note given by a stranger to a husband that he might deliver it to his wife, to whom it was made payable, to secure peace between a newly married couple, is without consideration, and the wife cannot recover thereon. With this decision compare *Newman* v. *Nellis*, 97 N. Y. 285.

CARRIERS.

Limiting Liability

In *Barnes* v. *Long Island R. Co.*, 93 N. Y. Supp. 616, the New York Supreme Court (Trial Term, Owens County) decides that the clause in a contract of through shipment limiting the carrier's common-law liability, being void in the state where the contract was made and from which the shipment was made, is void

CARRIERS (Continued).

in the state to which the shipment was made, though the loss occurred there and though under the law of that state the liability of a carrier for negligence might be limited. Compare with this decision the Pennsylvania decision, *Pennsylvania R. R.* v. *Hughes*, 202 Pa. 222, where a different result is reached.

Expulsion of Passenger

The Supreme Court of Texas decides in *Texas and P. Ry. Co.* v. *Payne*, 87 S. W. 330, that where a railroad agent wrongfully refused to endorse a return trip ticket, and the passenger in consequence was ejected from a train, he was entitled to recover damages as for a wrongful expulsion and not simply the price of transportation which was demanded of him, it not having been incumbent on him to purchase a ticket or to pay his fare. Compare this decision with *Mo. Pac. Ry. Co.* v. *Martino*, 18 S. W. 1066, and *Southern Ry. Co.* v. *Wood*, 29 S. E. 894, 55 L. R. A. 536.

Duty to Stop at Stations

The Court of Civil Appeals of Texas decides in *Texas and P. Ry. Co.* v. *Bell*, 87 S. W. 730, that a railroad company is not bound, in the absence of contract or statute, to stop all its trains at every station, and a passenger with means at his command of ascertaining before he enters a train whether it will deliver him at his destination must avail himself of the opportunity, and enter the proper conveyance. Compare *G. C., etc., Ry. Co.* v. *Moore*, 83 S. W. 362.

Live-Stock Shipment

In *Eckert* v. *Pennsylvania R. Co.*, 60 Atl. 781, the Supreme Court of Pennsylvania lays down the general rule that where a railroad company transports horses beyond its own line it assumes the duty of delivering them at the terminus of its road to the connecting carrier in a car suitable to transport them to their final destination. This decision is very interesting, since it seems to extend the liability of the first carrier beyond what is ordinarily required of him in order to terminate his liability upon delivery to a connecting carrier.

CARRIERS (Continued).

Passenger on Freight Train

In a well-considered decision the Supreme Court of Nebraska analyzes the liability of a railroad company to a person travelling on a freight-train on a stock-shipper's pass or contract for the purpose of attending to and caring for the live stock being shipped on such train, and holds that such person sustains the relation of passenger to the carrier, but in a restricted and modified sense. The liability, it is said, is as follows:

"Such a person while so travelling assumes such risks and inconveniences as necessarily attend upon caring for such stock, and such as are incident to the means and methods employed by the company in the operation of its freight-train: and, as thus modified, the liability of the railway company to such shipper for personal injuries by him sustained by reason of the negligence of its employees is that of a carrier for hire.

"A shipper thus travelling on a freight-train carrying live stock does not assume the risk of negligence by the carrier, but only such dangers as result from his peculiar duties while the railroad is being carefully operated.

"In such a case the duty devolves upon the carrier to exercise the highest degree of care, skill, and diligence for the safety of the passenger practically consistent with the efficient use and operation of the mode of transportation adopted." *C. B. and Q. R. Co.* v. *Troyee*, 103 N. W. 68.

CHEQUES.

Delivery to Impostor

An interesting decision of the Supreme Court of Pennsylvania, from which two judges dissent, occurs in *Land Title and Trust Co.* v. *Northwestern Nat. Bank*, 60 Atl. 723. It is there held that where the drawer of a cheque delivers it to a person supposing him to be the one whose name he has assumed, the drawer must bear the loss, where such person negotiates the same, as against the drawee or a bona-fide holder thereof; and the further rule is laid down that where a cheque was drawn by the trust department of a trust company on its own banking department, and was delivered to an impostor, supposing him to be the person whose name he had assumed, and payment was refused by the banking department immediately

CHEQUES (Continued).

after the cheque was issued, because the person presenting it was not identified, it did not affect the liability of the drawer for a loss as against the drawee or a bona-fide holder of the cheque. Compare the earlier Pennsylvania decision of *Land Title and Trust Co.* v. *Northwestern Nat. Bank*, 196 Pa. 230.

CONSTITUTIONAL LAW.

Police Powers

The Supreme Judicial Court of Maine decides in *State* v. *Robb*, 60 Atl. 874, that a municipal ordinance which by its terms gives the exclusive privilege of collecting and removing all refuse matter constituting house offal or swill within the city to a person or persons specially appointed, and which prohibits all other persons from engaging in that business, is not void as creating a monopoly and as being in restraint of trade. The ordinance is held to be constitutional and not a deprivation of property without due process of law, though the court reserves the point as to whether the municipality could forbid the removal of offal in a proper manner by a person from his own premises. See further upon this point the *Slaughter-House Cases*, 16 Wall. 36.

CONNECTING CARRIERS.

Injury to Goods

The Supreme Court of Arkansas holds in *St. Louis Southwestern Ry. Co.* v. *Myer*, 86 S. W. 999, that a connecting carrier which receives a car, apparently in good condition, of vegetables, and promptly transports and offers it to the consignee, thereafter retaining it at the consignee's request, is not liable for the freezing thereof because of a defect in the car furnished by the initial carrier.

CONTRACTS.

Single Women

In *Parkes* v. *Tolman*, 87 S. W. 576, the Kansas City Court of Appeals decides that an employer has a right to employ single women only, and if a married woman contracts to serve him and engages in his service, concealing the fact of her marriage, thereby deceiving him, he may avoid the contract on discovery of

CONTRACTS (Continued).

the deception. The further rule is laid down, however, that unless injured by the deception the employer is liable for services performed and accepted before he terminates the contract. Compare *McAleer* v. *Horsey*, 35 Md. 452.

CORPORATIONS.

Salaries of Officers: Equity

In *Raynolds* v. *Diamond Mills Paper Co.*, 60 Atl. 941, the Court of Chancery of New Jersey decides that where the officers of a close manufacturing corporation, whose stock has no recognized market value, vote themselves increases in their salaries while pursuing a policy of expanding the business by the use of the profits for that purpose, to the exclusion of dividends on the stock, a court of equity has power to compel the restoration of excessive amounts so withdrawn and to adjust the salaries to a reasonable basis. Compare *Gardner* v. *Butler*, 30 N. J. Eq. 702.

Liability of Directors

The New York Supreme Court (Appellate Division, First Department) decides in *Hoboken Beef Co.* v. *Hand*, 93 N. Y. Supp. 834, that directors of a corporation, doing business without the United States, who resign prior to the first day on which a report is required by a state statute cannot be subjected to liability for the debts of a corporation under such statute where a report is not filed on the date when it is required. See *Jones* v. *Barlow*, 62 N. Y. 202.

Notes: Execution: Validity

In *Blanc* v. *Germania Nat. Bank*, 38 S. 537, the Supreme Court of Louisiana decides that although the charter of a corporation requires that its notes shall be signed by the president and countersigned by the secretary, a note of the corporation signed by the secretary alone will be valid if issued in due course of business, and especially if the corporation was in the habit of disregarding that provision of its charter. And it would make no difference that the note had not been given for a plain loan, but had been discounted, nor that it was the creditors of the corporation, and not the corporation itself, that contested its validity, the corporation being defunct and

CORPORATIONS (Continued).

insolvent. It is further held that even if said note because of non-conformity with the charter were invalid, a pledge executed along with it to secure its payment would not lapse for want of a principal obligation, but would remain in full force and effect as security for the return of the money received in the transaction. See also *Martin* v. *Webb*, 110 U. S. 7.

DEEDS.

In *Wagner* v. *Fehr*, 60 Atl. 1043, it appeared that plaintiff sued two defendants for reconveyance of real estate and repayment of the price, charging that he was induced to convey his real estate to one of the defendants for part consideration of cash and the balance in the stock of a corporation which was worthless because of the fraudulent organization of the corporation by the defendants, and alleged that the second defendant was a grantee of the real estate from the first defendant. Under these facts the Supreme Court of Pennsylvania, with one judge dissenting, decides that the bill stated a cause of action. See in connection herewith *Williams* v. *Kerr*, 162 Pa. 560.

Action for Reconveyance

DIVORCE.

An interesting decision in connection with the rights of husband and wife where the doctrine of community property applies occurs in *Ligon* v. *Ligon*, 87 S. W. 838. It is there held by the Court of Civil Appeals of Texas that a right of action against a railroad for personal injuries sustained by a husband after he and his wife have separated with the intention of never again living together as man and wife is community property, one-half of which may be set apart to the wife on her obtaining a divorce from the husband.

Community Property

The Supreme Court of Louisiana decides in *Baker* v. *Jewell*, 38 Southern, 532, that the court of the domicile of the marriage may, at the suit of the wife, render a decree of divorce against the non-resident husband on constructive service as provided by statute, but such court is without jurisdiction to render a decree for

Non-Resident Husband

DIVORCE (Continued).

alimony or for costs against the non-resident husband, not served with process, and not appearing in the cause. Compare *Bunnell* v. *Bunnell*, 21 Fed. 244.

EMINENT DOMAIN.

Damages

In *Bennett* v. *Long Island R. Co.*, 74 N. E. 418, the Court of Appeals of New York decides that where a steam surface railroad company had acquired a right of way in fee, it was not liable to the abutting owner of a lot on a street, who had acquired title through mesne conveyances from the grantor of the railroad company after conveyance to it, because of damages to his easements by the construction of a viaduct to connect its trains with an elevated road. The case is distinguished in the opinion from *Lewis* v. *N. Y., etc., Railroad Co.*, 162 N. Y. 202, and *Muhlker* v. *Same*, 197 U. S. 544, with which it should be compared.

EVIDENCE.

Presumption of Death

In *Donavan* v. *Twist*, 93 N. Y. Supp. 990, the New York Supreme Court (Appellate Division, Third Department) decides that evidence that a person had left his wife and children to go to another city, and had not been heard from for sixteen years, is insufficient to raise a presumption of death when considered in connection with the fact that after leaving home he was known to be living in adultery. Compare *Matter of Miller*, 30 N. Y. St. Rep. 212.

Res Gestæ

Difficult questions arise with regard to the admissibility of statements made by third parties at the time of some transaction, with reference to their admissibility in evidence under the rule of res gestæ. A decision upon this point occurs in *Kuperschmidt* v. *Metropolitan St. Ry. Co.*, 94 N. Y. Supp. 17, where the New York Supreme Court (Appellate Term) decides that in an action against a street railroad for injuries received by plaintiff in a collision between a wagon he was driving and a car, testimony of a witness who was a mere spectator that when he saw the car pushing the wagon along he called out to the

EVIDENCE (Continued).

motorman, "Why don't you stop the car?" was no part of the res gestæ and was therefore inadmissible. The court says: "The witness did no act which contributed to the accident, and was in nowise associated with its happening, but was a mere spectator. His declarations or exclamations constituted no part of the res gestæ and were therefore inadmissible." *Ehrhard* v. *Met. St. Ry. Co.*, 69 App. Div. 124, 74 N. Y. Supp 551.

Opinion Evidence

The Supreme Court of Louisiana decides in *State* v. *Hopper*, 38 S. 452, that to ask how the prisoner looked while in the presence of the dead body of his supposed victim is not to call for the opinion of the witness, but to interrogate him as to a fact. If in answer to such a question the witness, instead of describing minutely the appearance of the prisoner, gives an opinion as to his looks,—for instance, that he looked scared,—such opinion would not be objectionable. It is further held that opinion evidence is admissible on questions of identity.

Declarations as to Title

The Supreme Judicial Court of Maine decides in *Fall* v. *Fall*, 60 Atl. 718, that declarations which do not bear upon the quality of any possession of the declarant, and have no reference to the identity or location of boundaries or monuments, or to any matter concerning physical conditions or use, are properly excluded; and where their sole purpose is to show that the title which the record shows to exist did not in fact exist they are not admissible, whether the declarant was in or out of possession, or is living or dead. Compare *Phillips* v. *Laughlin*, 99 Me. 26.

LANDLORD AND TENANT.

Injury to Tenant's Child

The Supreme Judicial Court of Massachusetts decides in *Cummings* v. *Ayer*, 74 N. E. 336, that a declaration in an action against the landlord for injuries to a child of the tenant by reason of a defective floor in the leased building, which fails to allege a violation of any agreement between the landlord and tenant binding the former to repair, fails to show a breach of duty

LANDLORD AND TENANT (Continued).

owed by the landlord to the child. The general rule is laid down that to hold the landlord on his contract to repair the leased premises it must appear that notice was given of the defective condition of the premises, or that he knew of it and neglected to repair, or that he agreed to repair without receiving notice of the defect. See also *Hutchinson* v. *Cummings*, 156 Mass. 329.

MORTGAGES.

Subsequent Acquisition of Title

Where a mortgage securing a loan used to pay the purchase price of the premises, and to satisfy a judgment which was a lien thereon, was executed before the mortgagor obtained title, but while he was in possession under no claim of right, the equitable lien obtained by the mortgagee was inferior to the rights of a subsequent purchaser for value without notice. New York Supreme Court (Appellate Division, Third Department) in *Donovan* v. *Twist*, 93 N. Y. Supp. 990.

MUNICIPAL CORPORATIONS.

Change of Grade of Streets

The Supreme Court of Michigan decides in *Miller* v. *City of Kalamazoo*, 103 N. W. 845, that since a city in changing the grade of a street exercises a legislative power, which it cannot bargain away, it is not liable to a property owner for the freezing of a private service-pipe leading from his residence to mains belonging to a water works system owned by the city, caused by a lowering of the grade of the street and consequential exposure of the service pipe to frost. Compare *Pontiac* v. *Carter*, 32 Mich. 164.

NEGLIGENCE.

Proximate Cause

It is decided by the Supreme Court of Arkansas in *Little Rock Traction and Electric Co.* v. *McCaskill*, 86 S. W. 997, that where the motorman of a street-car negligently ran over a fire-hose which was conveying water to a burning residence, cutting the hose, so that by reason of the waste of water from the opening the firemen

NEGLIGENCE (Continued).

lost control of the fire to such an extent as to cause a destruction of the furniture in the residence, the owner thereof was entitled to recover damages from the street railroad company on the ground that the cutting of the hose was the proximate cause of the loss. Compare *Mott* v. *Hudson River Ry. Co.*, 1 Rob. 585.

PUBLIC NUISANCE.

Use of Streets

It is decided by the Supreme Court of Georgia in *City Council of Augusta* v. *Reynolds*, 50 S. E. 998, that a fair occupying seventy-five or eighty feet in width and four blocks in length of an important business street in a city, and consisting of numerous tents, inclosing shows and exhibitions, in front of which are stationed men blowing horns and talking through megaphones to attract attention, together with various other stands, booths, structures, ferris wheels, merry-go-rounds, and other devices for amusement of the public and profit to the owners, which fair a company of the state militia is permitted to station on the street for a week, is a public nuisance of a most aggravated nature. Compare *Elwood* v. *Bullock*, 15 L. J. N. S. 330.

PUBLIC SCHOOLS.

Religious Exercises

Cases involving difficulty as to religious exercises in public schools arise not infrequently and almost invariably present interesting discussions by the court. A recent example of this is the decision in *Hackett* v. *Brooksville Graded School Dist.*, 87 S. W. 792, where the Court of Appeals of Kentucky decides that a prayer offered at the opening of a public school, imploring the aid and presence of the Heavenly Father during the day's work, asking for wisdom, patience, mutual love and respect, looking forward to a heavenly reunion after death, and concluding in Christ's name, is not sectarian, and does not make the school a "sectarian school" within the provision of the state constitution prohibiting the appropriation of educational funds in aid of sectarian schools. It is further held that the King James translation of the Bible, or any edition of the Bible, is not a sectarian book, and the reading thereof

PUBLIC SCHOOLS (Continued).

without comment in the public school does not constitute sectarian instruction within the meaning of a state statute providing that no books of a sectarian character shall be used in any common school, nor shall any sectarian doctrine be taught therein. The attack in this case was made by a member of the Roman Catholic Church, and the decision presents a very carefully considered and thorough discussion of the matters involved. It is well worth study. Compare *Donohoe* v. *Richards*, 38 Me. 379.

REPLEVIN.

Property Subject

The Supreme Court of Arkansas decides in *Cannon* v. *Mathews*, 87 S. W. 428, that growing strawberry-plants attached to the soil are personal property and the subject of replevin. Strawberries, it is held, are "fruits of industry" and not "natural products," and are consequently to be treated as personal property. Compare with this decision the case of *Cutler* v. *Pope*, 13 Me. 377.

SALES.

Warranties

In *Collins* v. *Pigner*, 60 Atl. 978, the Superior Court of Delaware decides that no particular words are necessary to create a warranty, but any affirmation made at the time of sale as a fact, and as an inducement to the sale, if relied upon by the buyer, amounts to a warranty; but the mere expression of an opinion, not amounting to an affirmation and not showing an intent to warrant, will not constitute a warranty. Compare *Burton* v. *Young*, 5 Har. 233.

Inspection of Goods

In *W. L. Watkins & Co.* v. *Guthrie & Co.*, 38 S. 370, it appeared that buyers of corn shipped to them paid the draft and received the bill of lading therefor, and on the same day, without inspection, though having ample opportunity therefor, and without breaking the seal of the car, forwarded the goods to their customers. Under these facts the Supreme Court of Mississippi decides that an acceptance of the corn is conclusively established and the buyers are liable within the rule of caveat emptor.

SERVICE.

In Pennsylvania a statute passed in 1859 authorizes, in a suit in equity concerning the property within the state, a court to direct subpœna or other process to be served on any defendant therein, residing out of the jurisdiction of the court in which the suit is brought, wherever he may reside or be found. In *Wallace* v. *United Electric Co.*, 60 Atl. 1046, the Supreme Court of the state holds this act unconstitutional in so far as it attempts to render valid such extraterritorial service of process in proceedings in personam, so as to render service on a bill for discovery against a domestic and a foreign corporation, served on the foreign corporation in the state of its domicile, of no effect. Compare *Coleman's Appeal*, 75 Pa. 441.

Non-Resident Defendants

STREET RAILROADS.

It is held by the Superior Court of Delaware in *Foulk* v. *Wilmington City Ry. Co.*, 60 Atl. 973, that a street-car is not required to stop at street intersections for a funeral procession to pass nor to give a funeral procession the right of way. The court therefore lays down the rule that the fact that by courtesy street railroads have given funeral processions the right of way does not relieve one driving a vehicle in a funeral procession from using reasonable care and precaution to avoid collision with a street-car.

Funeral Processions

TRUST COMPANIES.

An important decision as to the right of a trust company to receive on deposit funds of an estate in which it is one of the executors occurs *In re Moore's Estate*, 60 Atl. 991. In this case a trust company was one of the executors of an estate, the funds of which were deposited with the trust company, which allowed the usual two per cent. interest thereon. The Supreme Court of Pennsylvania holds that it could not be surcharged with interest in excess of that rate on the theory that it was bound to account for all the profits made out of the estate.

Liabilities